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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536

FILE: WAC 01 268 56359 OFFICE: CALIFORNIA SERVICE CENTER

DATE: JAN 06 2004

IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

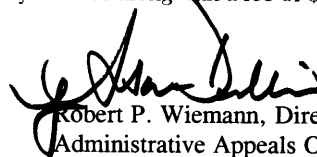
**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded for further action.

The petitioner is a business and organizational consulting firm that employs one person and has a gross annual income of \$248,413. It seeks to employ the beneficiary as an organizational counselor. The director denied the petition because the petitioner failed to establish that (1) the offered position qualified as a specialty occupation, and (2) the beneficiary was qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief and other documentation. Counsel states, in part, that the offered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of the offered position.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a

specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the letter accompanying the I-129 petition, the petitioning entity stated that the duties of the beneficiary are as follows:

Provides training and educational programs pursuant to [the petitioner's] management methodology. Provides guidance services and counsel[s] individuals and groups using specially developed management and organizational methodology. Collects, organizes and analyzes information about company and personnel through records, tests, interviews, and professional sources for vocational and management planning. Counsels personnel to improve efficiency and effectiveness of individuals, organizational units, and organization. Compiles and studies occupational and educational information to aid counselees in making and carrying out objectives.

On August 29, 2001, the director issued a request for evidence, seeking a detailed job description of the work to be done, a copy of the position announcement, copies of contracts between the petitioner and its clients, a copy of the beneficiary's license or credentials, and a copy of the beneficiary's school transcripts.

In response, counsel submitted a letter, several "statements of work" (contracts) for the petitioner's clients, and copies of the beneficiary's university transcripts. The letter indicated that the petitioner uses a workplace counseling program called

Breakthrough Performance Technology (BPT), which focuses on improving social interaction and working relationships between key personnel and departments within a company in order to improve company performance. Utilizing BPT, the beneficiary would interview all levels of employees to assess the company's needs and problems, and identify potential areas of improvement. The beneficiary would then implement a BPT-based plan of action including on-site coaching meetings and seminars, discussions, and follow-up.

On November 19, 2001, the director denied the petition, stating that the record did not support a finding that the beneficiary would be performing a majority of duties in a specialty occupation and that, even if the position were classified as a specialty occupation, the beneficiary was not qualified to perform its duties. In the decision, the director explained that the job description focused on duties to be performed during a small portion of the beneficiary's actual time on the job, such that the majority of the time would be spent on unknown duties.

The director further explained that, as described, the proffered position most closely resembled that of a management analyst, as discussed in the Department of Labor's *Occupational Outlook Handbook* (*Handbook*). The director noted that according to the *Handbook*, private employers generally seek individuals with a master's degree in business administration to fill positions as management analysts. Since the beneficiary holds the equivalent of a U.S. bachelor's degree in psychology, the director determined that the beneficiary would not be qualified to perform the duties of the proffered position.

On appeal, counsel asserts that the offered position does not equate to that of a management analyst, as its focus is on organizational improvement through individual behavior modification, rather than on traditional business-oriented consulting. Counsel submits three letters from other consulting firms that use the BPT method, and two case studies about this counseling method, which is also called "Landmark Technology," in support of his contention that a bachelor's degree in psychology or social science provides a more appropriate foundation for this position than does business administration. Counsel also explains that the beneficiary would be involved full-time in the job duties detailed on record, and not just a portion of her work time, as stated in the director's decision. Counsel notes that while the actual on-site seminars and coaching sessions for a given client might require a few days out of a week, the preparation for such presentations and follow-up afterwards would occupy the rest of the beneficiary's time on the job.

A review of the information on the record reveals that the most appropriate job classification for the duties described on the record is that of an organizational psychologist, as discussed in

the 2002-2003 edition of the *Handbook* on page 242. The *Handbook* describes this position as follows:

Industrial-organizational (I/O) psychologists apply psychological principles and research methods to the workplace in the interest of improving productivity and the quality of worklife. They also are involved in research on management and marketing problems. They conduct applicant screening, training and development, counseling, and organizational development and analysis. An industrial psychologist might work with management to reorganize the work setting to improve productivity or quality of life in the workplace. They frequently act as consultants, brought in by management in order to solve a particular problem.

Regarding the educational and training requirements for I/O psychologists, the *Handbook* notes that persons with a master's degree in psychology may work in these positions. According to the *Handbook*, a bachelor's degree is the minimum qualification for entry into fields relating to psychology. Thus, the offered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A) because a bachelor's degree in a specific specialty is required to perform the duties of the position.

The second issue to be discussed concerns the beneficiary's qualifications. The director stated in the denial letter that the beneficiary is not qualified to perform the job; however, the director examined the beneficiary's qualifications vis-à-vis the position of management analyst. The director will need to determine whether the beneficiary qualifies to perform services as an organizational psychologist. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. The director may request additional evidence that is deemed necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director shall enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.